

distressed and require assistance whilst on their pilgrimage, and if it is possible to set up an organisation to give assistance of this character on a governmental basis, it should not be impossible to devise a scheme to carry out the testator's charitable intentions in the present case.

I think, therefore, the proper order is, first, to declare that this trust is a valid charitable gift and secondly, to order that a scheme be settled by the Attorney-General in consultation with the trustees, for the administration of this charity.

Order accordingly.

Solicitors: *Mallal & Namazie.*

LOH CHIN & ORS. v. THE REGISTRAR OF TRADE UNIONS

[A. C. J. (Buhagiar J.) June 19, 1957]

[K. L. — Civil Appeal No. 31 of 1956]

Trade Union Enactment, 1940, ss. 10, 12, 14 and 16 — Refusal of Registrar to Register — Appeal — Trade Union (Appeal to the Minister for Labour) Regulations, 1949 — Act of Registrar in granting or refusing application for registration — Duty of Registrar — Minister — Functions of.

This was an appeal from a decision of the Minister for Labour upholding the decision of the Registrar of Trade Unions refusing registration of the Pan-Malayan Rubber Workers Union. The ground of appeal was briefly that the Minister failed to act in accordance with the principle of natural justice.

Held: (1) the functions of the Minister in the present case were similar to those of administrative tribunals. This does not mean that the Minister may act arbitrarily and ignore the provisions of law laid down for the hearing of appeals; it is only in that respect that he is to act judicially; he must conform with the procedure laid down by statute;

(2) the Courts should not interfere with the manner in which such ministerial discretion has been exercised.

Provisions of the Trade Union legislation dealing with registration of trade unions and appeal from decisions of the Registrar considered.

Nature of act of Registrar in granting or refusing applications for registration of a trade union considered.

Cases referred to:—

- (1) *R. v. Manchester Legal Aid Committee* (1952) 2 Q.B. 427.
- (2) *R. v. Registrar of Friendly Societies* L.R. 7 Q.B.D. 741, 743.
- (3) *Local Government Board v. Arlidge* (1915) A.C. 120.
- (4) *Shell Co. of Australia v. Federal Commissioner of Taxation* (1931) A.C. 275, 295.
- (5) *Labour Relations Board of Saskatchewan v. John East Iron Works Ltd.* (1949) A.C. 134.

CIVIL APPEAL.

M. B. Brash for the appellants.

C. M. Sheridan (Ag. Solicitor-General) for the respondent.

Buhagiar J.: — This is an appeal under section 17 of the Trade Unions Enactment, 1940 (F.M.S. No. 11 of 1940) from a decision of the Minister for Labour upholding the decision of the Registrar of Trade Unions refusing registration of the Pan-Malayan Rubber Workers Union.

On the 1st February, 1956, Tan Tuan Boon, as Honorary Secretary and seven other members of the said Union made application to the Registrar of Trade Unions under section 9 of the Trade Union Enactment for registration as a trade union.

On the 23rd June, 1956, the Union was served with a notice by the Registrar under section 14 of the Enactment informing the applicants that the application for registration had been refused on the grounds that the Union was likely to be used for unlawful purposes.

On the 27th June, 1956, the Pan-Malayan Rubber Workers Union preferred an appeal from the decision of the Registrar to the Minister for Labour under section 16 of the Enactment and under the Trade Union (Appeal to the Minister for Labour) Regulations, 1949 (L.N. 169 of 1949); the appeal was in the form of a memorandum in writing accompanied by a copy of the grounds of refusal.

The Registrar of Trade Unions made a statement dated the 10th July, 1956, in reply to the memorandum setting out facts relating to the refusal of registration.

The Pan-Malayan Rubber Workers Union filed a counter-reply dated the 23rd July, 1956. Two copies of this counter-reply were sent to the Minister for Labour with a request that he consider using his powers under regulation 6 of the Trade Union (Appeal to the Minister for Labour) Regulations, 1949; the union as appellants stated that they wished to put questions to the various persons alleged by the Registrar to have made records and expressed opinions; they requested permission to file affidavits by the principal officers of the Union stating that they were not and never had been Communists or Communist sympathisers and generally rebutting the allegations made in the Registrar's reply; they also requested leave that they might be represented by counsel at the hearing.

On the 13th August, 1956, the Union wrote to the Minister asking when the matter was coming on for hearing and for his ruling on the request for permission to file affidavits and for leave to be represented by

counsel. A reminder was further sent on the 22nd August, 1956, and on the 5th September, 1956, a letter was addressed to the Private Secretary to the Minister asking for acknowledgment of receipt of the letters dated the 13th and 22nd August, 1956 and for instructions as to how the matter was to proceed.

The Minister for Labour gave his decision on the 5th September, 1956, stating that after considering the Police reports produced before the Registrar and the representations made by the appellant he agreed with the decision of the Registrar for the reasons the Registrar had stated.

This is an appeal from that decision of the Minister. The ground of appeal is briefly that the Minister for Labour failed to act in accordance with the principle of natural justice, *audi alteram partem*, or as stated in the letter dated the 15th April, 1957, by the solicitors of the appellants to the Solicitor-General in which further particulars are given;

"The whole of the appellants' case is summed up in the words of Lord Justice Roche which are referred to in the judgment given by the Court of Appeal in the case—*Rex v. Manchester Legal Aid Committee*. Ex parte R. A. Brand & Co., Ltd.⁽¹⁾—reported at p. 427 (1952) 2 Q.B.D., and in particular the words 'that they must always give a fair opportunity to those who are parties in the controversy to correct or to contradict any relevant statement prejudicial to their view. In other words, those principles of British justice proceed upon the basis that both sides have a right to be heard.'"

It is convenient at this stage to consider the relevant provisions of the Trade Union legislation dealing with registration of trade unions and appeal from decisions of the Registrar of Trade Unions.

Section 10 of the Trade Union Enactment, 1940 which deals with, registration provides as follows:—

"The Registrar, if he is satisfied that a trade union applying for registration has complied with the provisions of this Enactment and of the regulations made thereunder and that the objects, rules and constitution of the union do not conflict with any of such provisions and are not unlawful and that such union is not likely to be used for unlawful purposes or purposes inconsistent with its objects and rules shall register the trade union in the prescribed manner:

Provided that if any one of the objects of such trade union is unlawful, the registration of the trade union shall be void."

Under section 12 of the Enactment the Registrar "may call for further information for the purpose of satisfying himself that any application complies with the provisions of section 9 or that the trade union is entitled to registration under the Enactment."

Section 14 provides: "The Registrar may refuse to register any trade union if he is not satisfied that the trade union has complied with the provisions of this Enactment or of any regulations made thereunder, or if he is of opinion that any one of the objects or rules, or the constitution of the union is unlawful or conflicts

with any such provision, or that the union is likely to be used for unlawful purposes or purposes inconsistent with its objects and rules."

Section 16(1) provides that any person aggrieved by the refusal of the Registrar to register a trade union . . . may appeal to the Minister for Labour against such refusal . . . Under sub-section (2) of the same section any such appeal is to be presented, considered and disposed of in such manner and in such form as may be prescribed by regulations. The Trade Unions (Appeal to the Minister for Labour) Regulations provide that the appeal shall be preferred in the form of a memorandum (regulation 3), that the Registrar may make a statement in reply (regulation 4) and that the appellant may file a counter-reply (regulation 5). Regulation 6 reads as follows:—

(1) The Minister for Labour may, if he considers it necessary so to do, call for such further evidence as he may require to enable him to come to a decision and may examine witnesses on oath or affirmation.

(2) Where witnesses are to be examined the Minister for Labour shall appoint a day, time and place for the purpose.

(3) Notice of the day, time and place so appointed shall be given to the Registrar and sent to the appellant by registered post.

(4) The Registrar and the appellant may, with the permission of the Minister for Labour, put questions to such witnesses.

In the present case the Minister for Labour gave his decision without calling for further evidence, oral or by affidavits and it is contended by the appellants that the Minister in giving his decision was exercising judicial powers and he did not act judicially when he failed to exercise the discretion given him by regulation 6 to call for further evidence and to hear what the appellants had to submit further to what was stated in the memorandum and in the counter-reply.

The Solicitor-General who appeared for the Registrar of Trade Unions, accepted the proposition that the appellants had a right to be heard and in disposing of the appeal the Minister was under an obligation to comply with the principle of natural justice *audi alteram partem* but, he submitted, the manner of appeal is laid down by statute and the relevant statutory provisions have been complied with and the Minister was not bound to call for further evidence if he did not consider necessary so to do to enable him to come to a decision. Counsel for the appellant on the other hand argued that the memorandum of appeal and the counter-reply of the appellants were only in the nature of pleadings and the Minister was bound in the exercise of his judicial function to give the appellants the opportunity of being further heard and of producing evidence to rebut the information laid before the Registrar of Trade Unions by the Federation Police Authorities.

It is essential in the first place to consider the nature of the act of the Registrar of Trade Unions in granting or refusing applications for registration of a trade union.

Under section 10 of the Enactment before the Registrar can register the trade union, he must be satisfied (1) that the trade union applying for registration has complied with the provisions of the enactment and of the regulations made thereunder and that the objects, rules and constitution of the union do not conflict with any of such provision and are not unlawful and (2) that such union is not likely to be used for unlawful purposes. Similarly under section 14 of the enactment the Registrar may refuse to register the trade union (1) if he is not satisfied as aforesaid or (2) if he is of opinion that the union is likely to be used for unlawful purposes.

No power is either expressly or impliedly given to him by the Enactment to call for evidence either oral or documentary or to administer the oath; section 12 gives him the power to call for further information to enable him to a decision.

In my opinion the duties of the Registrar under the Enactment are ministerial and not judicial. I am strengthened in this view by the report of the Registrar as set out in *R. v. Registrar of Friendly Societies*⁽²⁾. In that case the Registrar was dealing with his functions under section 13(2) of the Trade Unions Act, 1871 which provides that: "The Registrar upon being satisfied that the union has complied with the regulations as to registration in force under the Act, shall register the union."

The Registrar there was of opinion that his duties were ministerial, not judicial. The ministerial nature of the duties of the Registrar of Trade Unions under the local Enactment is more accentuated by reason of the discretion vested in him to refuse registration if he is of opinion that the union is likely to be used for unlawful purposes.

Counsel for the appellants relied on *Local Government Board v. Arlidge*⁽³⁾ for the proposition that the person who hears an appeal exercises judicial functions; at p. 132, Viscount Haldane, L.C. said: "My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially."

No doubt this is a correct statement of the law where the authority which is to deal with the appeal has been vested with judicial functions; but in my opinion it does not follow that where an appeal lies to a person or authority such person or authority is vested in all cases with judicial functions. As *Starke J.*, quoted by Lord Sankey, L.C. in *Shell Co. of Australia v. Federal Commissioner of Taxation*⁽⁴⁾, stated: "A right of appeal

in itself does not establish the vesting of judicial power either in the Commissioner or the Board of Revenue." In dealing with the appeal the Minister for Labour was dealing with a matter the decision of which depended on considerations of policy and he was not exercising judicial functions. In *Labour Relations Board of Saskatchewan v. John East Iron Works, Ltd.*⁽⁵⁾, their Lordships of the Judicial Committee of the Privy Council did not decide whether in that case the power exercised by the appellant Board was a judicial power or not but at p. 149 they stated: "Nor do they doubt, as was pointed out in the latter case, that there are many positive features which are essential to the existence of judicial power, yet by themselves are not conclusive of it, or that any combination of such features will fail to establish a judicial power if, as is a common characteristic of so-called administrative tribunals, the ultimate decision may be determined not merely by the application of legal principles to ascertained facts but by considerations of policy also."

The functions of the Minister in the present case are, in any opinion, similar to those of such administrative tribunals. This does not mean that the Minister may act arbitrarily and ignore the provisions of law laid down for the hearing of appeal; it is only in that respect that he is to act judicially; he must conform with the procedure laid down by statute. This he has done and it is impossible to say that the appellants were not heard or given the opportunity of contradicting any relevant statement prejudicial to their view. The only complaint of the appellants is that the Minister did not avail himself of the powers conferred on him by regulation 6 which enable him to hear further evidence. The Minister was dealing with an appeal from an opinion of the Registrar of Trade Unions and under regulation 6 he may hear further evidence if he considers it necessary so to do. The Minister did consider the material before him i.e., the memorandum of appeal, the reply of the Registrar of Trade Unions and the counter-reply of the appellants and he did not consider it necessary to hear further evidence to enable him to come to a decision — decision on a matter which was to be determined not by the application of legal principles to ascertained facts but by considerations of policy on the material before him. Having dealt with the appeal in the manner provided by the Regulations the Minister discharged the duty imposed on him in the fashion contemplated by statute and he cannot be attacked for not availing himself of a power the use of which was left in his discretion — a discretion which is ministerial and not judicial. The Courts should not interfere with the manner in which such ministerial discretion has been exercised.

The appeal is therefore dismissed. No order for costs.

I should add that the above consideration do not necessarily apply to all cases of appeals to the Minister. The present case is concerned with appeals from a refusal by the Registrar of Trade Unions under the second part of section 14 to register a trade union because he is of opinion that the union is likely to be used for unlawful purposes. It is conceivable in cases of refusal under the first part of that section that the matter to be decided involves the application of legal principles to proved facts where considerations of policy do not enter into the decision; in such circumstances it may be that the powers of the Minister are not purely ministerial.

Appeal dismissed.

CHAN CHONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Sutherland J.) January 25, 1957]

[K. L. — Criminal Appeal No. 84 of 1956]

Minor Offences Ordinance, 1955, s. 28(k) — Loitering with intent to commit an offence — Necessity to prove that person is a suspected person or reputed thief — Charge.

In this case the accused was charged as follows: "That you on 10.11.56 at about 1.30 a.m. at Batu Lane, Kuala Lumpur were found loitering in a public place with intent to commit a seizable and non-bailable offence and that you have thereby committed an offence punishable under section 28(k) Minor Offences Ordinance, 1955."

It was argued on appeal that the charge was defective as it was not alleged that the accused was a suspected person.

Held: the charge in this case was defective and therefore the conviction must be set aside.

Cases referred to:—

- (1) *Fairbairn* 33 Cr. App. R. 179.
- (2) *Harris* 34 Cr. App. R. 184.
- (3) *Public Prosecutor v. Leong Yoon Meow* (1953) M.L.J. xxxv-xxxvi.
- (4) *Public Prosecutor v. Syed Bakri* (1955) M.L.J. xvii.

MAGISTRATE'S CRIMINAL APPEAL.

P. G. Lim for the appellant.

J. P. Kirby (Federal Counsel) for the respondent.

Sutherland J. : — When this appeal came on for hearing Miss Lim appeared for the appellant and Mr. J. P. Kirby, Deputy Public Prosecutor for the respondent.

The charge against the accused was :—

"That you on 10.11.56 at about 1.30 a.m. at Batu Lane, Kuala Lumpur were found loitering in a public place with intent to commit a seizable and non-bailable offence and that you have thereby committed an offence punishable under Section 28 (k) Minor Offences Ordinance, 1955."

At the outset Mr. Kirby stated that he could only support the conviction if the words "suspected person or reputed thief" in section 28(k) of the Ordinance operated as a defence, instead of being an ingredient of the offence. He continued that it does seem from the cases that it is essential to prove that the accused is a suspected person or reputed thief as part of the evidence, and that this forms part of the offence. He cited *Fairbairn's*⁽¹⁾ case, in which in order to prove that the appellant came within the category of a suspected person evidence of a previous conviction of the appellant was properly admitted. He also cited *Harris'* case, which appeared to indicate that evidence is necessary to prove that an accused is a "suspected person" and it should be part of the charge.

Miss Lim, for the appellant, stated that it is essential to use the language of the section so that the accused has notice of the charge he has to meet. The accused should have known that he was being charged as a suspected person so that he could defend himself. In the cases cited, the charges must have alleged that the accused was a "suspected person". She referred to section 152 of the Criminal Procedure Code. She also referred to 1953 M.L.J. p. xxxvi where it is stated that *Public Prosecutor v. Leong Yoon Meow*⁽³⁾ is authority for the proposition that it is a very good working rule to hold that where what an accused person is alleged to have done cannot be described in the language of any statutory provision creating an offence or where it seems necessary to depart from the language of the section in framing a charge, then the probability is that no offence has been committed. She also referred to *Public Prosecutor v. Syed Bakri*⁽⁴⁾ where the learned Judge said :—

"I have repeatedly emphasised that in framing charges prosecution officers should adhere as closely as possible to the wording of the statute constituting the offence which is charged and that Magistrates should be at pains to see that this is done. If it is done, the prosecution know what they have to prove and the accused person knows what is charged against him. If it is not done then there is the danger of a muddle of the sort that has come to light in this case."

The charge in the present case should have read "that you, being a suspected person, etc."

The accused was convicted by the learned Magistrate who has written well-arranged grounds of decision.